

APPENDIX G

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)**

**IN RE: COLLEGE ATHLETE NIL
LITIGATION**

Case No. 4:20-cv-03919-CW

**DECLARATION OF PROFESSOR
STEPHEN F. ROSS IN SUPPORT
OF OBJECTION TO
SETTLEMENTS ON BEHALF OF
CLASSES OF PAST, CURRENT
AND FUTURE NCAA COLLEGE
ATHLETES**

Hon. Claudia Wilken

I. INTRODUCTION AND SUMMARY

1. My name is Stephen Ross. I am a Professor of Law and the Lewis H. Vovakis Distinguished Faculty Scholar at the Penn State Center for the Study of Sport in Society at the Pennsylvania State University. I am also a Co-Director of the Penn State Center for the Study of Sport in Society at that institution. Before joining the academy, I was an attorney at the Federal Trade Commission and the Department of Justice Antitrust Division. I have written extensively on sports topics, including collegiate athletics administered by the National Collegiate Athletic Association (“NCAA”). I have also consulted globally with leagues, sports federations, and players’ unions concerning the design of sporting competitions and the regulations of competition for players’ services. My CV is attached as Exhibit A to this declaration.
2. I submit this declaration in opposition to the proposed injunctive relief settlement (“IRS”) negotiated between Class Counsel in the *House* and related cases and the NCAA. I have reviewed both the proposed IRS and the overall proposed settlement to which it was appended. I have read all of the briefing submitted for and against preliminary approval of the proposed settlement.
3. It is my considered opinion that the proposed IRS should not be given final approval by this Court for several reasons. *First*, it represents an unprecedented and unwarranted extension of the nonstatutory antitrust exemption recognized under federal labor law. *Second*, it trades monetary benefits for current members of the class and uncertain potential economic benefits for some future athletes in exchange for broad antitrust immunity in a manner likely to injure many future college athletes and fans of Division I college football and basketball. *Third*, it creates an unprecedented cap on revenue sharing with Division I college athletes that has no corresponding floor, which is both unfairly one-sided and likely to create a competition unresponsive to consumer preference.

II. THE PROPOSED IRS CONSTITUTES AN UNPRECEDENTED AND UNWARANTED EXPANSION OF PRINCIPLES DERIVED FROM THE NON-STATUTORY LABOR EXEMPTION TO THE SETTLEMENT OF A CLASS ACTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 23

4. Based on the distinctive need to balance the potentially conflicting policies reflected the Sherman Act (15 U.S.C. §§ 1-8) and the National Labor Relations Act (“NLRA”) (29 U.S.C. §§ 151-169), the United States Supreme Court has held that anti-consumer and anti-labor employer restraints are immunized from antitrust scrutiny when they arise out of a collective bargaining relationship between employers and the NLRA-mandated exclusive bargaining representatives of workers in a bargaining unit designated by the National Labor Relations Board (“NLRB”). *See Brown v. Pro-Football, Inc.*, 518 U.S. 231, 250 (1996). This permits workers seeking their own objectives to agree with employers to restrain output in a manner unresponsive to consumer preference, *Local U. No. 189, Amalgamated Meat Cutters & Butcher Workmen of No. Am., AFL-CIO v. Jewel Tea Co.*, 381 U.S. 676, 689-91 (1965) (agreement barring supermarket from selling meat after 6 p.m. upheld). It also allows workers to gain substantial concessions in collective bargaining on other

1 matters in return for, in effect, selling antitrust immunity to an employer group through
 2 bargaining that was not in good faith. *See McCourt v. California Sports, Inc.*, 600 F.2d
 3 1193, 1199-1202 (6th Cir. 1979) (significant anticompetitive restraints on player market
 4 exempt from antitrust scrutiny when agreed to by union in return for significant
 5 concessions on other matters). Universities seeking to gain antitrust immunity through
 6 collective bargain could arrange for players to become employees of their athletic
 conferences and negotiate such a bargain. *See William W. Berry, III, Beyond NIL*, 26
 Vand. J. Ent. & Tech L. 275, 294 (2024). Such policies would therefore come into play if
 successors to the college athletes currently in the certified class were to vote to form a
 union and engage in collective bargaining.

- 7 5. There is no precedent for granting this power to counsel for the representative of a class
 8 certified pursuant to Fed. R. Civ. P. 23(b)(1). Neither policies of civil procedure nor
 9 antitrust policy support the idea that various stakeholders in an industry may agree to
 10 restrain trade that harms some groups for the benefit of others. Indeed, while the NLRA
 11 and non-statutory labor exemption jurisprudence explicitly contemplate that, as part of its
 12 duty of fair representation, unions may trade off benefits to some members against harms
 13 to others, *see, e.g., Wood v. Nat'l Basketball Ass'n*, 809 F.2d 954, 961 (2d Cir. 1987), Fed.
 14 R. Civ. Pr. 23(e)(2) requires equitable treatment of all members of a class. As noted herein,
 the settlement provides substantial compensation to those members of the class who have
 or are about to end their college careers, but it imposes substantial restrictions on the ability
 of elite athletes currently in high school to receive market-based compensation for their
 services to top football and basketball programs.
- 15 6. The IRS ultimately reflects the parties' collective judgment that competition is not in the
 16 public interest; rather, in their view, the public interest would be served by a discretionary
 17 cash payment to college football players and a scheme that limits future compensation.
 18 However, the Supreme Court has clearly rejected the notion that federal courts can approve
 19 this sort of arrangement. *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 693-
 20 96 (1978) (ban on competitive bidding was a *per se* violation of the Sherman Act). In so
 21 doing, the Court wisely followed the sage admonition of Chief Justice William Howard
 Taft in his path marking decision in *United States v. Addyston Pipe & Steel Co.*, 85 Fed.
 22 271 (6th Cir. 1898) *aff'd as modified*, 175 U.S. 211 (1899) that to allow judges and private
 23 parties to determine when competition should be supplanted would be to "set sail on a sea
 24 of doubt." 435 U.S. at 696.

25 **III. THE PROPOSED IRS IMPROPERLY TRADES SHORT-TERM**
 26 **MONETARY BENEFITS TO MEMBERS OF THE PLAINTIFF CLASS**
 27 **FOR IMMUNITY FOR ANTICOMPETITIVE RESTRAINTS THAT HARM**
 28 **FUTURE CLASS MEMBERS AND CONSUMERS, BY RENDERING**
FUTURE OUTPUT UNRESPONSIVE TO CONSUMER PREFERENCE.

7. Were the proposed IRS unilaterally adopted by NCAA member schools, the effective
 "salary cap" on the amount of compensation that top college football programs can spend
 on player talent would constitute an unreasonable restraint of trade in violation of Section
 1 of the Sherman Act. Precedents establish that neither elite college football players, nor

1 fans, find other products to be reasonable substitutes for Division I Football Bowl
 2 Subdivision football. There is no plausible, pro-competitive justification for the salary cap.
 3 In fact, the IRS' supporters promote the settlement as equating college with professional
 4 sports by reason of the alleged equal sharing of revenue. *See* ECF No. 450 at 22. Although
 5 courts have recognized that competitive balance is a potentially viable justification, this is
 6 only where the degree of competitive balance that the defendants seek to achieve will
 7 increase fan appeal, and only where the challenged restraint actually furthers that objective.
 8 In light of the historic imbalance in college football, concurrently with the sport's
 9 exploding commercial popularity, there is no evidence that college football fans desire
 10 significant competitive balance.¹ Moreover, it is highly doubtful that the proposed salary
 11 cap will actually achieve such balance. The agreement sets a maximum salary without
 12 limits to the many other ways in which the historically dominant programs maintain their
 position. The absence of a floor provides no assurance that programs that are weaker
 because of a lack of sufficient team-specific revenue to compete will actually spend funds
 necessary to compete more effectively against dominant programs. For this reason, absent
 immunity through the labor exemption or a court-approved settlement agreement, the
 proposed cap is clearly unlawful. *Cf. Robertson v. Nat'l Basketball Ass'n*, 556 F.2d 682,
 686 (2d Cir. 1977) (court concluded that modified labor restraints in professional basketball
 league, where player draft can significantly improve poor teams quickly and with plausible
 claims for output-enhancing competitive balance, were not "clearly unlawful").

- 13 8. Indeed, in the short run, the cap is likely to harm competitive balance as applied to well-
 14 funded programs who do poorly. If the cap were in place following this season, it would
 15 substantially constrain the Alabama Crimson Tide, USC Trojans, Michigan Wolverines,
 16 Florida State Seminoles, and others from improving to a level demanded by their fans.
 17 Moreover, because of the difficulty in challenging well-established rivals (detailed in
 global soccer by economist Stefan Szymanski), only programs prepared to invest huge
 sums of money in excess of those spent by dominant rivals can hope to join the elite group.²
- 18 9. Absent the salary cap, elite players would receive more compensation from the top
 19 programs than they would receive under the proposed settlement's anticompetitive scheme,
 20 and programs would spend money to develop the level of athletic programs its fans wish
 21 to support. In light of the Supreme Court's admonition that the Sherman Act is a
 22 "consumer welfare prescription," *NCAA v. Bd. Of Regents of Univ. of Okla.*, 468 U.S. 85,
 107 (1984) ("*Board of Regents*") (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343
 (1979)), consumer welfare is not advanced when output is unresponsive to consumer
 preference. *See Board of Regents*, 468 U.S. at 106 n.30 ("[b]ecause of the NCAA controls,

23 ¹ In this regard, consumer preference is measured by overall attendance or television ratings, not a
 24 one-person/one-vote preference of consumers of smaller programs who ideally would like their
 25 alma mater to compete against elite schools but lack the willingness to pay for it.

26 ² Stefan Szymanski, *Money and Soccer: A Soccernomics Guide; Why Chievo Verona,*
 27 *Unterhaching, and Scunthorpe United Will Never Win the Champions League, Why Manchester*
City, Roma, and Paris St. Germain Can, and Why Real Madrid, Bayern Munich, and Manchester
United Cannot Be Stopped (2015), ch. 2.

the price which is paid for the right to televise any particular game is responsive neither to the relative quality of the teams playing the game nor to viewer preference.”).

10. The parties expressly agreed (ECF No. 535-1 at 24) that an essential element of the IRS is that all members of the injunctive class are barred from challenging the terms of the salary cap arrangement. If a union, which exercises a statutory right to serve as the exclusive representative of all current and future members of a bargaining unit, wishes to exercise its duty of fair representation to reach an agreement that favors some members of the bargaining unit, even if others are worse off, that is the policy of the National Labor Relations Act. *J.I. Case Co. v. NLRB*, 321 US. 332, 338-39 (1944) (generally); *Clarett v. NFL*, 369 F.3d 124 (2d Cir. 2004) (Sotomayor, J) (union agreements can disadvantage those not yet in the bargaining unit). I am unaware, however, of any precedent where a court approved a settlement purportedly fair to the entire class (because of a large cash settlement to those directly affected by pre-existing antitrust violation) by disadvantaging future victims who are members of the injunctive class.
11. Class counsel’s view that their role here is closely analogous to the role of counsel for professional athletes who have settled an antitrust class action under Fed. R. Civ. P. 23 settlement in combination with a new collective bargaining agreement (*see, e.g., White v. NFL*, 41 F.3d 402, 406 (8th Cir. 1994)) is evident in their Supplemental Motion (ECF No. 534 at 2), when they suggest that the “critical inquiry” for this Court is to determine whether a particular aspect of conduct expressly permitted by the injunctive relief settlement is “fair and reasonable to the injunctive class where it is more than offset by the tens of billions of dollars in other benefits the Agreement allows.” This is only an important inquiry for this Court after it first determines that the standard for approval of injunctive relief under Rule 23 that significantly affects third party consumers whose welfare is the prime object of the Sherman Act, and significantly affects future members of the class who will recover nothing in monetary damages and will receive reduced economic benefits than would exist were it not for the injunction--should indeed focus solely on the interests of the injunctive class as a whole.
12. Class counsel seeks to assuage any concerns of the Court with regard to continuing NCAA regulations permitted by the IRS to prevent “faux” NIL payments by boosters that reflect supplemental compensation to athletes for their playing services, rather than legitimate payments for publicity rights. *Id.* They observe that these regulations are reasonable to prevent cap evasion. The Court seemed concerned that these regulations would limit individual athletes’ opportunities, but the fundamental flaw is not ancillary restraints to a salary cap, but the salary cap itself. These regulations are only necessary because salary caps artificially restrain compensation to talented players. In an unrestrained market, colleges would pay their athletes their market value and boosters would donate to the colleges, not pay the players separately through phony NIL licenses.

IV. THE IRS' INTRODUCTION OF AN UNPRECEDENTED REVENUE SHARING CAP WITHOUT A REVENUE SHARING FLOOR IS FURTHER EVIDENCE THAT IT REFLECTS A CARTEL ARRANGEMENT AMONG NCAA SCHOOLS TO IMPROPERLY PROP UP PROGRAMS UNABLE TO COMPETE IN A FREE MARKET.

13. In *Board of Regents*, the NCAA attempted to justify a significant restraint on output unresponsive to consumer preference – a fixed limit on the number of television appearances of the most popular teams – based on a desire to allow less popular programs to compete at the top level of intercollegiate athletics. The Supreme Court expressly rejected the legality of this scheme under the Sherman Act. Absent a congressional exemption, the risk that competition from the most successful programs would inhibit the ability of lesser programs to compete is part of the competitive process that the Sherman Act protects.

14. Any argument that the proposed IRS resembles in some respects salary caps imposed by professional sports leagues is unavailing here. Caps in such leagues all reflect a collectively bargained floor that promotes competitive balance, and they protect the consumer interest in maintaining loyalty to weaker teams, by insisting that clubs must spend a fixed *minimum* amount on player talent. In the National Football League, for example, the amount is 89% of the maximum permitted under the salary cap. Indeed, noted observers have criticized Major League Baseball (“MLB”) and its players for not agreeing to a similar scheme to protect the interest of consumers from small market teams like the Oakland A’s or Pittsburgh Pirates.³

15. Here, the proposed IRS has a cap on revenue sharing with college athletes, *but no floor*. As Article 3 of the IRS states: “Each Member Institution *will be permitted, but not required*, to distribute, each Academic Year, additional payments and/or benefits to student-athletes over and above annual existing scholarships and all other benefits currently permitted by NCAA rules as of the date of the filing of the motion for final approval up to a certain amount (the ‘Pool’).” ECF No. 535-1 at 61. Colleges thus are free to engage in *no* such sharing if they so wish.

16. Without a salary floor, the proposed IRS means that well-funded but under-performing programs (such as USC, Alabama, Florida State, etc.) are *precluded* from spending funds necessary to respond to their fans’ preferences, but there is no guarantee that traditionally weaker and underfunded programs (such as Northwestern, Vanderbilt, or California) will spend the money needed to be competitive with the currently dominant teams (Oregon, Notre Dame, Texas, Penn State, Ohio State). This reflects the goal of a classic cartel: fix prices or spending so that the weak and inefficient programs that cannot compete in a free market can continue to function at minimal levels, while allowing more successful firms

³ See, e.g., Joel Litvin, *Salary cap is the best-long term system for MLB*, Sports Business Journal, (Jan. 10, 2022), <https://www.sportsbusinessjournal.com/Journal/Issues/2022/01/10/Opinion/Litvin.aspx>.

1 to reap vast profits as the cap prevents them from spending revenues on continuous
2 improvement of talent.

3 **V. CONCLUSION**

4 17. For all of the foregoing reasons, it is my considered opinion, based on my extensive
5 knowledge and expertise, that the proposed IRS should not be granted final approval by
6 this Court.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct based on information known to me.

9 DATED: January 21, 2025

/s/ Stephen F. Ross

10 STEPHEN F. ROSS

APPENDIX A

STEPHEN F. ROSS

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Professional History

Professor of Law and Co-Director, Center for the Study of Sports in Society, The Pennsylvania State University, 2006 through present, Lewis H. Vovakis Distinguished Faculty Scholar, 2008-present. Courses taught: Contracts, Comparative Constitutional Law, Common Law Reasoning and Statutory Interpretation, Constitutional Law, Sports Law, Sports & Public Policy, Statutory Interpretation, Special project in Baseball Salary Arbitration

Visiting Professor, University of Sydney Faculty of Law, 2013-15. Courses taught: Canadian Constitutional Law

Senior Fellow, Sports Law Program, Melbourne Law School, University of Melbourne, 2013-20. Courses taught: Comparative Sports and Competition Law

Professeur associé, Faculty of Law, University of Montreal, 2014, 2020-2021. Course taught: Comparative Constitutional Law (via teleconferencing to American and UdeM students)

Visiting Scholar in Law and Sproul Fellow in Canadian Studies, University of California (Berkeley), 2012-13

Visiting Professor, Cass Business School, City University of London, 2009-10. Courses taught: Sports Business

Visiting Professor of Law, University of British Columbia Faculty of Law, 2000-09, 2013
Course taught: Comparative U.S./Canadian Law (via teleconferencing to American and UBC students)

Professor of Law, University of Illinois College of Law, 1986-2006 (Associate Professor, 1989-91, Assistant Professor, 1986-89). Courses taught: Antitrust, Advanced Antitrust, Antitrust & Intellectual Property (both U.S. and Comparative U.S./ Canadian/ European), Canadian Competition Law, Comparative Constitutional Law (U.S./ Canada), Government Regulation, Legislation, Real Property, Sales, Sports Law, Sports Law & Economics, Statutory Interpretation (Voting Rights Act), Statutory Interpretation (Welfare Legislation). Seminars and projects supervised: Appellate Advocacy, Baseball and Antitrust, Baseball and Public Policy (undergraduate course), Baseball Salary Arbitration, Canadian Constitutional Law, Legislative Drafting, N.C.A.A. Rulemaking

Visiting Professor of Law, University of New Brunswick Faculty of Law, 2005
Course taught: Canadian Competition Law

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Professional History, cont'd

Visiting Scholar, University of British Columbia Faculty of Law, January-June 1999

Contributing Editor, Antitrust magazine of the Section on Antitrust Law of the American Bar Association, 1991-99 (founding Editor-in-Chief, 1986-91)

Minority Counsel, Committee on the Judiciary, United States Senate, 1983-85

Attorney, Appellate Section, Antitrust Division, United States Department of Justice, 1981-83

Law Clerk, Hon. Ruth Bader Ginsburg, United States Court of Appeals for the District of Columbia Circuit, 1980-81

Attorney, Office of General Counsel, Federal Trade Commission, 1979-80

Education

J.D., 1979, University of California (Berkeley)

Associate Editor, California Law Review, 1977-79.

Member, Order of the Coif.

American Jurisprudence Awards in Crimes, Constitutional Law, and Evidence.

Finalist, Jamison Award for Law and Advocacy.

A.B., 1976, cum laude, University of California (Berkeley) (departmental honors in political science)

Publications

BOOKS:

Sports and the Law, 7th ed. (co-authored by Paul C. Weiler, Jodi Balsam, Will Berry, and Michael C. Harper) (Thomson/West 2023)

Derecho Deportivo Global (Thomson-Reuters 2022) (with Sergio Gonzalez Garcia)

Advanced Introduction to Global Sports Law (Edward Elgar 2021)

Comparative Constitutional Law: A Contextual Approach (with Helen Irving and Heinz Klug) (Lexis/Nexis Publishing 2014)

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A Roundtable Discussion for the Digital Age: Brady v. NFL, 29 Ent. & Sports Lawyer 1 (Summer 2011) (with numerous co-participants)

Judicial Review of NFL Drug Cases: Backgrounder on the Minnesota Vikings steroids case and Judge Magnuson's injunction against discipline, *available at* http://law.psu.edu/academics/research_centers/sports_law/topical_discussion

Exploiting Kids: The Scandal in Agent Recruiting of Athletically-Gifted Teens (with Raynell Brown and S. Douglas Webster), Policy Paper for Penn State Institute for Sports Law, Policy and Research (June, 2009), *available at* http://law.psu.edu/academics/research_centers/sports_law/topical_discussion

Interpreting the Canada Pipe Decision (roundtable for American Bar Association Sherman Act Section 2 Committee Newsletter, Fall 2006)

A Framework for Policymakers to Analyze Proposed and Existing Antitrust Immunities and Exemptions (with Darren Bush & Gregory K. Leonard), Antitrust Modernization Commission, October, 2005

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Non-Academic and Student Publications, cont'd:

English Cricket: Lifting Cricket's Fortunes, The Sports Nexus Report 2004 (with Oliver Hylton, Philip Snape, Philip de Nahlik, Ian Preston, and Stefan Szymanski)

The Baseball Antitrust Exemption Lives, But with Criticism, in the Eleventh Circuit, American Antitrust Institute Website, May 31, 2003 (www.antitrustinstitute.org)

Legalizing Merger to Monopoly and Higher Prices: The Canadian Competition Tribunal Gets it Wrong, Antitrust magazine (2001)

Fan-friendly competition is open competition, Sports Business Journal (July 17-23, 2000)

Verbot der zentralen Vermarktung bringt nur Vorteile (The Prohibition of Centralized Marketing Brings Advantages), Frankfurter Allgemeine Zeitung, January 3, 1998

Losing the Football Game, Legal Times, July 29, 1996

Consumers lose in recent sports labor exemption cases, Antitrust magazine (summer 1995)

A Solution to return to the ballpark, Indianapolis Star, Aug. 28, 1994

After McNeil: How About Plan "F" (For Fans)?, For the Record (Marquette Univ. Nat'l Sports Law Inst.), Oct./Nov. 1992

Recent Sports Antitrust Developments: Another Perspective, The Sports Lawyer, Mar.-Apr. 1992

Notre Dame's maverick deal demands action, The National Sports Daily, Mar. 12, 1990

Standards for Judging Allegedly Anticompetitive Agreements Between Leagues and Players, Antitrust magazine, summer 1987

Power Play: The NFL Wins, Arizonans Lose in Antitrust Case Brought By USFL, Arizona Republic, August 10, 1986

Comment, Exclusionary Zoning in California: A Statutory Mechanism for Judicial Nondeference, 68 Calif. L. Rev. 1154 (1979) (with Edward G. Weil)

Note, Bordenkircher v. Hayes: Ignoring Prosecutorial Abuses in Plea Bargaining, 67 Calif.L. Rev. 675 (1978)

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Original Teaching Materials

Law and Strategy in the Sports Business (2024) (class for law and undergraduate business students)
Comparative Constitutional law (2021-present) (with Heinz Klug & Jean Leclair)
Elements of the Law (2010-present) [1st year required course, then seminar]
Comparative Canadian/U.S. Law (2000-14)
Interpreting the Voting Rights Act [1st year statutory interpretation elective] (2001-05)
Interpreting Welfare Legislation [1st year statutory interpretation elective] (1996-98)
Comparative Canadian Competition Law (1997)
Sports Law (1989)

Academic Presentations

“Fair Play”: Fútbol Profesional contra Derecho de la competencia (Universidad de Pacifico, Lima, Peru, 2024)

The Coase Theorem and sports league revenue sharing (Columbia Univ. 2024)

The Unique and Essential Functions of sports governing boards (Columbia Univ. 2023)

A Comparatively Paradoxical View on Australian Constitutional Formalism (Australian Ass’n of Constitutional Law 2022)

Insights from global sports law for Indian sports (Nirma Univ. 2021)

Common Law & Commandments: How Judges Reason About Precedents As a Method for Jews to “Wrestle with the Torah” (Penn State University 2020)

Interpreting Texts, Including Contracts (Univ. of Pretoria 2019)

Remedies for Breach of Contract by Professional Athletes (Univ. of Adelaide 2018)

The Constitutional Right to Human Dignity in Comparative Perspective (Univ. of Haifa 2017, Univ. of Sydney 2018)

Redefining the Mission of Sports Governing Boards (Monash Univ. 2018, Columbia Law School 2017, Univ. of Melbourne 2009)

The Contested Values of College Sports (Univ. of Michigan 2014)

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Academic Presentations, cont'd

An Outsider's Perspective on Canadian Originalism (Univ. of Montreal 2014)

Why Federalism? Judicial Arbitration of Federalism in the Absence of Regional Majorities that are National Minorities (Univ. of Sydney 2013)

The Value of Advisory Opinions on Conventions in Sports and Constitutional Law (Univ. New South Wales 2014)

"Bodyline" and "Cheating" in Sports and Constitutional Law (Univ. of Sydney 2009)

Designing a Sports League (C 5 Sports Law & Business Conference, London 2009)

A Trans-Atlantic Conversation: What Americans Can Learn from European Sports, and Some Outsider Observations About European "Football" (Birkbeck Univ. London 2009)

Legal Lessons from Baseball (Penn State 2007)

Invited Expert Testimony

Bold in Substance and Meek in Procedure, Knight Commission on Intercollegiate Athletics, May 2016

If it Walks Like a Duck and Quacks Like a Duck, It's Not a Goose: Why North American Sports Leagues Should Be Single Entities, But They Are Not Now, House Subcommittee on Courts and Competition Policy, January 2010

Crisis and Competition Policy, Turkish Competition Authority, March 2009

Restoring the Market for Out-of-Market Baseball, Senate Committee on Commerce, Science and Transportation, March 2007

A Framework for Policymakers to Analyze Proposed and Existing Antitrust Immunities and Exemptions, Antitrust Modernization Commission, December, 2005 (with Darren Bush and Gregory K. Leonard) (*available at* www.amc.gov/commission_hearings/statutory_immunities_exemptions.htm)

Options for Amending the *Competition Act*, Canadian Competition Bureau, September, 2003

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Invited Expert Testimony (contd)

Competition Policy for Ordinary Canadians, Not Economists, Canadian House of Commons Standing Committee on Industry, Science, and Technology, April 2003

A US Perspective on Competition Law Reform, Canadian Bureau of Competition, May, 2000

In the Matter of An Agreement Between the Football Association Premier League *et al*, British Restrictive Practices Court (1996 No 1 (E&W)), October, 1998 (testimony on American sports and antitrust jurisprudence applicable to sports league sales of television rights)

Competition Policy toward Joint Ventures, Federal Trade Commission, October 1997 and March 1998

Protecting Fans and Taxpayers Against Exploitation by Monopoly Sports Leagues, House Committee on the Judiciary, February, 1996

Franchise Relocations by Monopoly Sports Leagues, Senate Committee on the Judiciary, Subcommittee on Antitrust, Business Rights, and Competition, November, 1995

Repealing baseball's antitrust exemption, House Committee on the Judiciary, Subcommittee on Economics and Commercial Law, March, 1993 (together with supplemental testimony concerning the effect of the baseball exemption on minor league baseball)

Antitrust Implications of Compulsory License Repeal for Sports Broadcasting, Senate Committee on the Judiciary, Subcommittee on Patents, Copyrights and Trademarks, April, 1992 (together with supplemental testimony concerning abuses of the antitrust exemption by Major League Baseball)

The Attack on Legislative History as a Tool for Statutory Interpretation, House Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Administration of Justice, April, 1990

Antitrust and Policy Implications of Increased Cablecasting of Sports Programming, Senate Committee on the Judiciary, Subcommittee on Antitrust, Monopolies, and Business Rights, November, 1989

Sports Broadcasting, Antitrust, and Public Policy, Senate Committee on the Judiciary, Subcommittee on Antitrust, Monopolies, and Business Rights, October 1987

Judge Bork, Judicial Activism, and Antitrust, Senate Committee on the Judiciary, 1987

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Conference & Workshop Participation

“The Concept of the Residual Claimant in Sports: Why Sports Leagues Should Resemble McDonald's Rather than the United Nations”, Bocconi University, May 2009

“The Role of the Academic as an Advisor to Sports Entities,” C5 Conference on Sports Law and Business, London, April 2009

“A Trans-Atlantic Conversation: What Americans can Learn from European Sport, and Some Outsider Observations About European ‘Football’”, Birkbeck College Sports Management Lecture Series, March, 2009

“How Australian Law Teaches an American Law Professor How To Advise a British Sports Manager Helping Build an Indian Sports League”, University of Melbourne Sports Law Centre, May 2008

“MLB/DirecTV as a Case of Anti-consumer Exclusive Dealing Without Foreclosure,” Federal Communications Bar Ass’n and Stanford Institute of Economic Policy Research, April 2007

“New Frontiers in International and Comparative Sports Law,” Association of American Law Schools Sections on Law and Sports and Comparative Law, January 2007

“The Antitrust Modernization Commission at Mid-Course,” American Bar Association Section on Antitrust Law, June, 2006

“*Dagher* and *Illinois Tool Works*: The Supreme Court Steps In,” American Bar Association Section on Antitrust Law, March, 2006

“Robinson-Patman Act Reform,” American Bar Association Section on Antitrust law, May 2005

“Competition Policy and Sports Leagues,” University of British Columbia Division of Strategy and Business Economics, February 2005

“Sports League Restraints and the *Clarett* care”, AALS Annual meeting, January 2005

“A Statutory Charter for Social and Economic Rights,” University of British Columbia Faculty of Law, September, 2004

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Conference & Workshop Participation, cont'd

"The Limits of Efficiency," Ass'n of American Law Schools Annual meeting, January, 1999

"Interpreting Different Texts," Ass'n of American Law Schools Annual meeting, January, 1999
(organizer, moderator, and author of discussion materials)

"The Labor Exemption and Professional Sports," Sports Law Conference sponsored by the Association of American Law Schools Section on Sports Law and the National Sports Law Institute of Marquette University, November, 1998

"Current Issues in Professional Sports," American Bar Association Forum on Entertainment and Sports Law, October, 1998

"Fan Oriented Enforcement Initiatives by State Attorneys General," National Association of Attorneys General Sports Summit, November, 1996

"Textualism and the 104th Congress," Ass'n of American Law Schools annual meeting, January, 1996

"The Unreasonableness of Sports League Salary Caps under Antitrust Statutes and the Common Law," New York Bar Ass'n Section on International Law, October, 1995

"Franchise relocation and antitrust", ABA Section on Antitrust Law, April 1995

"Inferring conspiracies under the Sherman Act," Conference Board Antitrust Seminar, 1993

"Myth of Amateurism and the Reality of the Cartel," Chicago Bar Association Antitrust Section/University of Illinois Alumni Association, February 1992

"Distinguishing price and non-price restraints," Conf. Bd. Annual Antitrust Seminar, March 1991

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University Service

Director, Center for the Study of Sports in Society, 2016-present

Member, University Committee on Promotions & Tenure, Penn State University, 2009-11

Chair, Sports-Interested Interdisciplinary Faculty Group, Penn State University, 2007-16

Chair, Professional Sports Counseling Panel, University of Illinois, 1990-2006

Member, University Senate, University of Illinois, 1987-89, 1994-96

Member, University of Illinois Athletic Board, 1988-93 (Chair, Committee on Athletic Progress and Eligibility, 1989-91)

Member, various doctoral and masters committees, Institute for Labor and Industrial Relations, University of Illinois, 1988-2004

Member, University of Illinois Senate Committee on Admissions, 1987-88

Professional Activities

American Association of Law Schools, sections on Legislation, Antitrust, and Sports Law
Sports Law Section Executive Committee, 1988-90, 2007-present
Antitrust Section Executive Committee, 1993-96
Legislation Section Executive Committee, 1994-2000

American Bar Association, Section on Antitrust Law
Member, Monograph Committee, 1989-93
Member, Task Force on Robinson-Patman recommendations for the Antitrust Modernization Commission Committee, 2005-07

American Antitrust Institute
Member, Advisory Board, 1998-present
Chair, Sports and Antitrust Task Force, 2000-present
Senior Fellow, 2004-2012

Sports Lawyers Association: Lifetime Achievement Award 2021

Marquette University National Sports Law Institute
Member, Advisory Board, 2002-06

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Public Service Activities

Consultant, Canadian Competition Bureau, November 2002 (with regard to role of efficiencies in merger litigation)

Consultant, United States Department of Justice, November 2002 (with regard to antitrust policy re professional and college sports)

Consultant to Antitrust Modernization Commission re immunities and exemptions, 2005-06

Counsel for amicus curiae Consumer Federation of America, Chicago Professional Sports Ltd. Partnership v. National Basketball Association, No. 91-1434 (7th Cir.) (pro bono)

Counsel for amici curiae American College of Nurse-Midwives and American Medical Students Association, National Organization for Women v. Scheidler, No. 91-2468 (7th Cir.) (pro bono)

Counsel for amici curiae Consumer Federation of America and Sports Fans United, Butterworth v. National League of Professional Baseball Clubs, No. 82,287 (Fla. S.Ct.) (pro bono) (challenge to baseball's antitrust exemption)

Counsel for amici curiae Consumer Federation of America and Sports Fans United, National Basketball Association v. Williams, No. 94-7709 (2d Cir.) (pro bono) (challenge to salary cap and other labor market restraints)

Counsel for amici curiae Antitrust Law Professors, NYNEX Corp. v. Discon, Inc., No. 96-1570 (U.S. S.Ct.) (pro bono) (antitrust standard for vertical exclusionary conspiracies)

Counsel for amici curiae Consumer Federation of America and FANS, Inc., Minnesota Twins Partnership v. State of Minnesota by Humphrey, No. C9-98-890 (Minn. S. Ct) (pro bono) (challenge to baseball's antitrust exemption)

Counsel for amicus curiae Consumer Federation of America, State of Minnesota by Hatch v. Minnesota Twins Partnership, No. 99-414 (U.S. S. Ct.) (pro bono) (same)

Counsel for Appellant, South Austin Coalition Community Council v. SBC Communications, Inc., No. 00-3864 (7th Cir.) (pro bono) (challenge to phone company merger)

Counsel for amici curiae Consumer Federation of America and American Antitrust Institute, Major League Baseball v. Butterworth, No. 02-10333-C (11th Cir.) (pro bono) (challenge to baseball's antitrust exemption)

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Public Service Activities (cont'd)

Consultant to counsel for respondents, News Ltd. v. South Sydney District Rugby League Football Club, No. S34 (High Ct. of Australia) (2002) (pro bono) (challenge to rugby league contraction that excluded respondent club)

Co-author on behalf of American Antitrust Institute, In the Matter of Nestle Holdings; Dreyer's Grand Ice Cream Holdings, Inc., Docket No. C-4082 (Federal Trade Commission) (2003) (pro bono) (comments on proposed consent decree in merger case)

Counsel for amicus curiae American Antitrust Institute, Texaco, Inc. v. Dagher, No. 04-805 (U.S.) (2004) (pro bono) (antitrust review of joint ventures)

Counsel for amici curiae American Antitrust Institute and Consumer Federation of America, American Needle, Inc. v. National Football League, No. 08-661 (U.S.) (2008) (pro bono) (whether sports leagues are 'single entities' for antitrust purposes)

Consultant for The Sports Nexus and co-author, State of Sport Britain 2010: A reforming sports policy for the new coalition government (advocating reform of national governing boards to be trustees for the game rather than serving parochial self-interests)

Counsel for amicus curiae Sports Fans Coalition, Brady v. National Football League, No. 11-1898 (8th Cir.) (2011) (pro bono) (whether lockout of decertified union can be enjoined)

Counsel for amici curiae Sports and Labor Law Scholars, United States Soccer Federation, Inc. v. United States National Soccer Team Players Association, No. 15-3402 (7th Cir. 2016) (whether arbitrator's contract interpretation can be overturned if contrary to plain meaning)

Counsel for amici curiae sports law and economic scholars, Relevant Sports LLC v. United States Soccer Federation, No. 21-2088 (2d Cir. 2021) (whether sports federations policies are agreements subject to section 1 of Sherman Act)